

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.2380 of 2016 (O&M)
DATE OF DECISION : 10th JULY, 2018

State of Haryana & another

.... Appellant

Versus

Pawan Kumar

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

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Present : Mr. Ravi Dutt Sharma, Deputy Advocate General, Haryana
for the appellants.

Mr. Ravi Verma, Advocate for the respondents

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A. B. CHAUDHARI, J. (Oral)

CM No.4954-LPA of 2016

The application is allowed as prayed for.

CM No.4955-LPA of 2016

For reasons mentioned in the application, which is accompanied by affidavit, delay of 266 days in filing the appeal is condoned.

LPA No.2380 of 2016

1. Being aggrieved by judgment and order dated 04.02.2016 passed by learned single Judge in CWP No.21956 of 2013, the State of Haryana has filed this letter patent appeal.
2. In support of the appeal learned counsel for the appellant submitted that the learned Single Judge committed error in setting aside the order Annexure P-7 by which respondent-Pawan Kumar was granted

promotion w.e.f. 01.01.2010. According to learned counsel for the appellant there was no reason for the learned Single Judge for setting aside the order and making a direction to grant promotion notionally w.e.f. 18.08.2006 whereas as a matter of fact during the said period the petitioner was chargesheeted. Not only that a minor punishment of stoppage of one annual increment, without cumulative effect, was also imposed on him 29.12.2008. According to counsel for the appellant, immediately thereafter namely expiry of punishment period he was granted promotion by order in question Annexure P-7 w.e.f. 01.01.2010 with which no fault could be found out. He therefore prayed for allowing the appeal.

3. Per contra learned counsel for the respondent vehemently opposed the appeal and submitted that the learned Single Judge made no mistake in setting aside the impugned order as the punishment that was imposed was a minor punishment and cannot act as impediment for the promotion for the period for which the claim was made and granted by the learned Single Judge. He, therefore, prayed for dismissal of the appeal with costs.

4. We have heard learned counsel for the rival parties for quite some time.

5. It is not in dispute that the petitioner was chargesheeted and enquiry was held against him. Finally on 29.12.2008, a minor punishment of stoppage of only one increment, without cumulative effect, was imposed on him. The said period expired on 29.12.2009 and immediately

thereafter the petitioner was promoted w.e.f. 01.01.2010 with which no fault could have been found out.

6. We find that learned Single Judge was impressed with the fact that the service record of the respondent was 70 per cent 'good' and 'very good' and he was earlier recommended to be promoted w.e.f. 18.08.2006 and that is why the learned Single Judge made the impugned order. We are afraid we can accept the said reasoning. It is not in dispute that the petitioner was chargesheeted and ultimately punishment of stoppage of only one increment was imposed upon him which lasted for one year till 29.12.2009 and immediately from 01.01.2010 he was granted promotion. It is significant to note and it is manifestly clear that the respondent did not challenge the said order of imposition of the punishment but accepted the same. Thus he was guilty of the charge for which he was punished. In that context, therefore, his service record for the earlier period was not at all relevant and was really extraneous. The punishment that was imposed on him which was accepted by him would obviously come in his way for claiming any promotion w.e.f. 18.08.2006. The Apex Court in the case of ***State of Tamilnadu Vs. K. S. Muragesan and others, 1995(3) RSJ 271***, held that in consideration for promotion the currency of punishment based on previous record stands as an impediment. That is the settled law.

7. In that view of the matter, the judgment and order asking the appellant to grant notional date w.e.f. 18.08.2006 to the respondent is illegal. In the result we make the following order.

ORDER

- (i) The LPA No.2380 of 2016 is allowed.

- (ii) The impugned judgment and order dated 04.02.2016 passed in CWP No.21956 of 2013 titled Pawan Kumar Versus State of Haryana and others, is set aside.
- (iii) No costs.

(A. B. CHAUDHARI)
JUDGE

10TH JULY, 2018
'raj'

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No